

Your Band is Your Business!

Legal considerations for bands and musicians

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It is no secret that the music business landscape has changed dramatically in the last 30 years. Historically, you and your band mates would simply get together, write good music, perform as often as possible and hope that the right A & R representative was watching you in the crowd to sweep you up out of the local music scene and into the national spotlight.

This was back in the days before the labels cared about your Twitter followers, Facebook "Likes," and album sales through iTunes. Today, the few labels with the willingness and capital to invest in your band want your band to be much further along than a "baby band," requiring you to show that the business of your band is in order. However, not every band and musician is looking for a label for their music. Moreover, an unprecedented number of musicians and bands are trying to make their own way to the top, through the help of home studios, social media, and online music distributors.

However, often overlooked with this emerging entrepreneurial spirit amongst musicians, are the mundane (but necessary) legal matters. Remember, your band is your [business](#). Treating it like your business (which may go against every ounce of your artistic being) will only contribute to your success and minimize risk for you along the way.

While your band name (or "trade name") may be plastered on albums, posters, and websites, your business should operate through a legal entity that provides the individual members with personal liability protection, tax benefits, and internal governance. Legal entities are governed by state law and are generally easy and cheap to form and register as long as there is cooperation among the band mates. Depending on the needs of your specific situation, you may seek to form a corporation (Band, Inc.), a limited partnership (Band, LP) or a limited liability company (Band, LLC), to name a few. In most instances, these entities, if formed and operating properly, will protect you individually from personal liability stemming from claims made against the band.

Another benefit to establishing as a legal entity is that they have their own unique internal governing documents which specifically outline decision making authority, ownership rights, contribution requirements, and payments to band members. A well crafted governing document can help to ensure efficiency as to the business decisions regarding your band, so you can spend more time concentrating on your music.

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Equally important is your consideration of what [intellectual property](#) protection you will implement to protect your creative ideas. Most musicians do not need to be lectured on the benefits of copyright registration, or the fact that their original music should be copyrighted. Still though, many musicians are not seeking copyright protection and, therefore, relinquish many important rights that could be available in the event someone pirates or copies your music without your authorization. Although certain copyright protections exist to protect your music merely by having it recorded, registering your copyright provides many additional benefits. First, it provides a constructive ownership date which can not be refuted by others – so you can more easily prove when your song was originally developed. Second, the registration of your copyright will give you jurisdiction in federal court (trust the lawyer, this is good to have) and will give you the ability to recoup any money you spend on a lawyer to sue the phonies that stole your song. Without this registration you would likely be limited to state court and would likely have no ability to have your lawyer's fees paid after a successful case.

Less obvious than copyright protection is the option to get a trademark for your band name. Everyone is familiar with the small “®” that appears next to almost every major corporate logo you see these days – this denotes that the logo is a *registered* trademark. Trademark registration protects your logos and taglines from others who may wish to use them in an attempt to make or sell music. Once you have a registered trademark, you have the exclusive right to be that name for that particular class of goods or services (like music).

For most bands, success or failure depends on the public being able to associate your music with your band name. Therefore, it is critical to consider the benefits of protecting that name from others who may want to copy you. A common problem arises when another band is assembled, possibly even after you have been using the name for a while, and uses the same name as your band. The immediate concern is that people may be confused about which band has made the song they like – which could affect sales. However, even more problematic is if the new band (with same name) gets a trademark, they could force you to stop using that name altogether. If you had sought and received a trademark early on, the new band would have not been granted their trademark (because it would conflict with yours) and, therefore, could not force you to change the name. Therefore, trademarks offer important offensive and defensive benefits for your band and can ensure your continued and uninhibited use of the name for years to come.

Remember these business considerations as your band gains traction and continues to write, record, and perform. They are necessary to ensure legal protection for you individually, your band, and your music. For more information about these and other business and intellectual property matters please contact [Michael B. Goldberg](#) or [Evan C. Pappas](#) at [Shumaker Williams, P.C.](#) to arrange a confidential consultation.

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